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# Consumer protection in the digital age: assessing current and future activities

## BACKGROUND PAPER

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## Summary

There are four elements that safeguard consumer rights in the telecommunication/ICT sector: consumer rights law, competition law, telecommunication/ICT and Internet law, and self-regulatory frameworks. Telecoms law usually enables the setting up of a separate regulatory authority and self-regulatory frameworks within the industry. The latter can either be put in place as part of the licence conditions for an operator or are self-imposed. Without these four elements, it is difficult for consumer complaints to be dealt with as there will be no framework for dealing with them and no recourse if operators (or others) fail to deal with them.

Of 132 countries surveyed by the ITU in 2005, 55 (42%) had no specific telecommunication consumer protection regulation/legislation: the majority of those without provision were in transition or developing countries. Africa is a good example, in its 2004 Annual Report, Consumers International<sup>1</sup> noted that:” To date, only a few African countries have enacted consumer protection legislation”. By the most optimistic assessment only 21 (40%) out of the 53 independent countries on the continent are likely to have some form of consumer legislation in the next 2-3 years. Again according to the ITU survey, there were 13 countries out of 27 in the Americas that have no legislation and 12 out of 25 countries in the Asia Pacific region with no legislation.

Voice service providers – whether fixed or mobile – are often reluctant to provide data on the level and type of complaints they receive. Operators view this complaints data as commercially sensitive information and are therefore reluctant to release it. But the argument that annually issued complaints data would be of tactical commercial use is questionable: arguably most of the short-term issues identified would be dealt within a twelve-month period. Some regulators oblige operators to provide information of this kind and a number of them publish this information as a way of focusing on quality-of-service issues.

Levels of complaints are closely tied to expectations. In less developed markets in Eastern Europe higher satisfaction levels were consistently registered as noted by a researcher for a major European mobile operator<sup>2</sup>. In other words, offered the same service, users in other European countries had higher expectation levels than those in the Eastern European part. . In the absence of operator information, there are sometimes other surveys conducted that address issues such as levels of user satisfaction and these can be used as “proxies” in the absence of better information.

Although there appear to be no universally accepted international benchmark figures for complaint levels, it is possible to identify some “metrics” that are helpful. These metrics are:

- Satisfaction rating with service.
- Call completion rates.
- Provision of service within specified number of days.
- Faults per month per 100 subscribers.
- Percentage of faults repaired by next working day.
- Mean time to repair.
- Percentage of bills challenged (addressing metering and billing credibility).

Regulators seem to adopt two significantly different positions in relation to consumer complaints. Either they encourage complainants to come directly to them and take up these complaints with operators. Or they see themselves as a point of “last resort” that the complainant can come to once he or she has exhausted all other avenues. Regulators do not always publicise their complaints procedure.

Most (but by no means all) regulators have been set up with a consumer responsibility contained within their top-level objectives. The absence of references to the interests of the consumer does not mean that a regulator cannot act in their interest. But having this role stated in the enabling framework of the regulator does make it easier for them to act to. The role of regulator can probably best be summarized by describing four different functions<sup>3</sup>:

- Voice (allowing the user to be heard and being responsive through consultation and redress mechanisms);
- Choice (ensuring plentiful choice in terms of the nature, quality and amount of services);
- Representation (preventing dominance by large industry interests through consumer councils or committees);
- Information (allowing consumers to make well-informed choices).

Regulators act “on behalf” of the consumer and however closely they consult with them, they cannot alone represent the consumer. They are no substitute for consumers themselves having a voice. Likewise when the industry itself argues for greater competition, its interests coincide with those of consumers and its trade associations often speak up for consumers. But when individual companies or groups of companies resist increased competition or put forward their own narrower interest, there is a clear parting of the ways between the interests of some parts of the industry and the consumer.

If regulators are to represent consumers then it is essential that their voices are heard, either directly in the overall board of the regulator or through Committees set up specifically by the regulator to have representatives of their interests.

## **Introduction**

This background paper draws on a study conducted by the author on “Assessing consumer activity in the telecoms and Internet sectors in Africa”<sup>4</sup>. Its findings allow Africa to be used as an example of a region that reflects many of the developing country issues found in other regions.

This background paper seeks to identify areas of common interest for policy-makers and regulators, whether they are from developed or developing countries. It seeks to point out where there might be necessary differences in practice that reflect the very different realities found in developing countries.

The background paper has five sections that cover the following:

**Section one** looks at the general trends (1.1) that have made consumer activity increasingly important and sets the overall context within which regulators operate (1.2).

**Section two** looks at: the legislative and regulatory frameworks that protect consumers; in the case of Africa and elsewhere, the level and type of complaints made; and the processes put in place to resolve complaints.

**Section three** looks at: the role of the regulator; what consumer organizations and related bodies do; consumer participation and representation in policy and regulatory processes; innovative services by regulators for consumers; the important role of the media in raising issues and complaints; and policy and legislative input from consumer groups.

**Section four** concludes by highlighting best practices and proposes (can't find a better word) recommendations.

The final section – Preparing for Tomorrow - (**Section five**) looks forward to the kind of consumer issues that will arise over the next five to ten years during the transition to IP networks.

For the purposes of this report, a consumer is defined as an individual acquiring, consuming or using a good or service available from either a public or private sector source, for personal use (individual or household).

For shorthand purposes, the term incumbent operator is used to refer to the incumbent telephone company or what is sometimes referred to as the historic operator.

## 1. The importance of consumers in the telecoms and Internet sectors

### 1.1 General Trends

A number of general trends have led to the rise of consumerism over the last thirty years. These changes have been most dramatic in countries that have in some way liberalized their economies and they include:

- *A shift from producer to service economies:* Developed countries have gone from earning the majority of their export revenues from manufacturing to getting more of this income from services. At a domestic level, with the lowering of the barriers protecting “national industries”, few parts of the private sector could remain complacent about the need to keep their customers. This trend has also been reinforced by the growth of multinationals competing globally, particularly during the 1970s and 1980s.
- *Greater levels of choice for consumers in key services:* With the appropriate policy and regulatory framework, privatisation of former state-owned enterprises creates greater levels of choice for consumers. The telecoms and Internet sectors have led this process of creating choice in many countries with quite different income levels. Therefore increasingly large numbers of people “shop around” to choose their telephone or Internet suppliers, along with many other services that were formerly in the public sector.
- *A shift from producers to consumers:* Whereas the state formerly used to favour “the producers” (particularly those working in state-owned industries or Government), it now emphasizes the perspective of “consumers”. Although Government still assumes the mantle of protecting or creating jobs in the economy, this can rarely be done at the expense of the cost of service provision to all of its citizens. The dilemmas posed by these choices are all-too-familiar to those Governments grappling with reducing the workforces of incumbent operators in order to deliver cheaper and better phone services to their citizens.
- *Increased importance of customer care as a consequence of competition:* The availability of customer care has increased with levels of competition. If the consumer has little or no choice, it makes no sense to put significant resources into making sure they are happy with the only choice they can make. Beneath this overall trend towards providing customer care, there is often a very differentiated approach towards how it is provided. Users of cheaper services are often allowed only limited online interactions whereas those buying more are treated better and given more customer service options. The overall quality of customer service - in society and in specific industries - will continue to be determined by the relative balance of power between suppliers and consumers; it will improve as competition becomes more intense, and decline as competition decreases<sup>5</sup>.
- *Consumers want more information and use it:* The arrival of the web has provided consumers with access to greater information in a wide range of fields. In the telecoms and Internet sectors, things like comparison sites allow consumers both to provide their views and to garner useful information to make informed choices. This information is particularly helpful where pricing and tariff structures are often the subject of continual tactical marketing offers that have the effect of confusing the consumer. Many companies are now devoting time and resources to participating in consumer web sites in the Internet and telecoms sector in order to be able to respond to issues raised first-hand. Obviously where Internet access, education and literacy levels are low, this “power of information” effect is likely to be less effective.

- *Consumerism not just the prerogative of the “haves”*: Active consumerism requires a level of literacy and education to be effective. Therefore there is a tendency to see it as something that is only relevant for those that possess the money to buy services and the education to make informed choices. However, there is an increasing understanding – particularly in transition and developing countries – that it is the poorest and least well educated that need consumer protection. The well-informed, middle-class person knows how to complain and get their service restored. The less well-educated person in the same position may not be able to achieve the same thing. This is an issue of equity in the market-place that policy-makers and regulators will increasingly need to address.

## 1.2 Overall context and issues

There is a clear relationship between citizens’ rights, the political system in place and the development in parallel of those same citizens having consumer rights within the market. In 1948, in the post-war period, the United Nations sought through its Universal Declaration of Human Rights to identify a number of basic rights that should be common to all.

Not surprisingly given the humanitarian, social and economic circumstances, almost all of these rights relate to the behaviour of government to its citizens. Only one clause – stating that everyone has the right of equal access to public services – seems to have any direct bearing on the topic being addressed. It was not until 1985 that the UN adopted Guidelines for Consumer Protection that were later expanded in 1999<sup>6</sup>.

Consumer rights and responsibilities are about the individual’s ability to respond to and influence things that happen in the market. They flow from a world that is defined by economic theory (and its assumptions) rather than political theory. It is assumed that the market operates and therefore there must be countervailing protection for those who buy products or consume services in it. One of the underpinning assumptions of the operation of a “free market” is that there is “efficient” competition between different players that will ensure a downward pressure on prices and the need to offer improved services in order to better compete.

Three concepts are central to understanding how consumer rights have been defined and are particularly relevant to the telecoms and Internet sector. The first of these concepts is “market failure”, an acknowledgement that for whatever reason the market does not operate freely or efficiently. The most frequent cause of market failure in the telecoms and Internet sectors is the existence of a monopoly or a duopoly, or the result of unfair competition. Where there is market failure, Government in its role as the “referee” of a market economy, has the right to intervene or to appoint regulators to do so.

The second concept is the idea of a “natural monopoly”: in other words, the provision of certain goods and services tends to favor the development of a single supplier. So for example, it is argued that it makes little sense to build two water or electricity supply systems in a country as this would not be economically efficient. Because basic services like these are seen as a “natural monopoly” it is important that Government has the power to regulate their operation.

Therefore, irrespective of who delivers the service (the public or private sector), “natural monopoly” infrastructure that delivers basic services (water, power and telephony) to citizens is seen concomitantly as a “public good”. The challenge from those favouring increased competition in the delivery of goods and services has been to extend the areas in which competition can function. Consumers in the UK have a choice of different electricity and gas suppliers whose prices

and service quality vary: this is competition at the services level. But telecoms infrastructure poses a more substantial challenge to the idea of natural monopoly. It is possible in parts of the infrastructure – at the local, national and international levels – to introduce some level of competition that will benefit the consumer.

The third concept is “dominant market power” which is where a player in a market has the ability to skew the operation of that market because of its strong commercial position. This is still often the case in many developing countries’ telecoms and Internet markets where the historic position of the incumbent operator still casts a long shadow over how the market operates. But it should be acknowledged that dominant market power can shift over time: it is certainly arguable that in developing countries mobile operators are often becoming the dominant market players. Again, where there is dominant market power, it is widely recognized that there needs to be ways for Governments or responsible authorities to control it.

In many countries, issues around price and access have gone from being political issues raised by citizens with their political representatives to being consumer issues only when there is some genuine level of competition that allows consumers to make a choice.

In a majority of countries worldwide, when markets were open to some form of competition, governments have set up telecoms regulators (which have taken several different forms) to carry out the responsibilities of Government in overseeing (?) the operation of the sector. Almost without exception, these have been set up with a double-headed imperative:

- 1.1 To look after the interests of all consumers: providing affordable prices, better service and extending service to more consumers (through universal access mechanisms).
- 1.2 To create an industry-friendly environment for the private sector: getting investment and defining markets that enable them to make a reasonable level of return.

When the task of liberalization started, some regulators naturally spent much of the initial years focusing on the issues raised by the second part of their overall mandate. And therefore for some of them, an interest in consumer issues has been a relatively recent development.

The regulator’s double-headed mandate is a balancing act between stakeholders’ two different interests. This is illustrated by the example below. There are wireless standards being used by a number of ISPs worldwide that will give them the ability to offer IP mobile voice services in the not-too-distant future. The service would be both innovative and probably cheaper for consumers. What should the regulator do? The existing mobile companies (like the incumbent operators before them) will point to their considerable existing network investment and say that it should not be allowed or that they will need to be compensated if it does. Should the regulators favour the consumer or industry?

Also, the ways that regulators defend consumer interests will vary according to their local context. In countries where literacy rates are high and internet access fairly widespread, it makes sense for them to encourage developments like service comparison web sites. In countries where literacy rates are low, the challenge is how to raise a voice for consumer interests in ways that do not require potential supporters to be able to read or write. For example, if as everyone seems to agree in a recent research study<sup>7</sup>, African consumers are largely unfamiliar with consumer rights and therefore would need “consumer education programmes”, what form will these take in order to reach those who cannot read or write? It should be emphasized that this is not just a developing country issue. In Canada, for example, a consumer agency noted that 40% of the country’s citizens “fall below the minimum desirable threshold of literacy.”<sup>8</sup>



In most instances the consumers of voice services in developing countries are a minority (even if a substantial minority) within their country and therefore the missing consumer voices are those people in communities where there is no opportunity to obtain this service. How these “missing consumers” are enfranchised is again a key challenge.

If regulators and consumer organisations in transition and developing countries can demonstrate that they can make a difference in a service-aware sector like telecoms and the Internet, then it will encourage consumers to become more demanding in other areas of their life. Many of the providers – particularly mobile providers - already set high standards of service and it may be that the sector will become a pioneer for wider changes in transition and developing country economies.

## **2. Protecting consumers and resolving complaints**

### **2.1 Legislative and self-regulatory frameworks**

There are four elements that safeguard consumer rights: consumer rights law, competition law, telecoms and Internet law, and self-regulatory frameworks. Telecoms law usually enables the setting up of a separate regulatory authority and self-regulatory frameworks within the industry<sup>9</sup>. The latter can either be put in place as part of the licence conditions for an operator or are self-imposed. Without these four elements, it is difficult for consumer complaints to be dealt with as there will be no framework for dealing with them and no recourse if operators (or others) fail to do so.

By themselves, these four elements do not guarantee consumer protection. Some kind of political will is one major pre-condition for their effectiveness as it allows for differing positions to be expressed. Another pre-condition is the clear application and transparent functioning of the rule of law precluding the ability of the executive of the Government to dictate the results reached in the Courts or for institutions or individuals to corruptly obtain a particular legal result. Throughout the world, there is always some distance between how things ought to work and how they actually do work. The greater the distance between these two positions in a country, the less likely it is that its citizens will benefit from effective consumer rights. Luckily for an increasing number of people – with certain very high profile exceptions – this gap has on balance been getting smaller rather than larger in many countries.

Of 132 countries surveyed by the ITU in 2005<sup>10</sup>, 55 (42%) had no specific telecommunication consumer protection regulation/legislation: the majority of those without provision were in transition or developing countries. According to the survey, the Quality of Service (QoS) responsibility was held mainly by regulators (77% of respondents) or the appropriate sector Ministry (17%). There were 142 independent regulators by mid 2006. In its 2004 Annual Report, Consumers International noted that:” To date, only a few African countries have enacted consumer protection legislation”. By the most optimistic assessment only 21 (40%) out of the 53 independent countries on the continent are likely to have some form of consumer legislation in the next 2-3 years. Again according to the ITU survey, there were 13 countries out of 27 in the Americas that have no legislation and 12 out of 22 countries in the Asia Pacific region with no legislation.

Different legal traditions affect the way in which consumer law operates. Put simply, francophone law-making flows from a national constitution in which the State grants its citizens certain rights. Through a process of laws and administrative decrees, the Government then seeks to describe the circumstances in which these rights can be exercised. The Anglophone legal tradition operates in

the absence of formal constitution and is built on challenges that assert the rights of citizens within a framework of existing laws and past precedents. Civil law, or Roman law, is the foundation of Latin American legal systems, whereas English common law is the basis of the American legal system. The common law system has the advantage of separating the functions of prosecutor and judge. This separation of powers is useful in adjudicating matters that relate to competition policy, but it can also be provided in a country with a Civil Law system<sup>11</sup>.

That said, the substance of framing legislation is often very similar, although it may differ in the level of detail provided. In many developing countries, the legislation is relatively recent and therefore it has not yet been widely used or tested in court.

The same is true for competition authorities. In the ITU survey quoted earlier<sup>12</sup>, 21 out of 35 African countries had no authority of this kind. Likewise 18 out of 33 countries in the Americas<sup>13</sup> and 15 out of 29 countries in Asia Pacific had no competition authority. But even where competition authorities exist, they are in significant number of countries relatively recent creations and the law upon which they operate has not often been tested in practice.

In most cases, the monopoly of the incumbent operator is enshrined in law or it has been allowed to retain a de-facto monopoly after the ending of its formal monopoly. However, recourse to law on competition issues is expensive and time-consuming. Some competition legislation, as in the case of Kenya, does not allow individual complaints.

Where there is a relatively effective regulator in place, it has often been quicker and more effective to pursue these consumer issues within the regulatory framework.

Regional bodies can play an important role in addressing issues across a range of countries: the European Commission's current initiative to address mobile roaming charges illustrates the effectiveness of this kind of approach. However, regional bodies in developing countries do not have the same institutional powers.

For example, the [Common Market for Eastern and Southern Africa](#) (COMESA) has approved a Regional Competition Law that includes a provision on consumer protection. The Francophone West African body, the Union Economique et Monétaire Ouest Africaine (UEMOA) has adopted a Regional Competition and Anti-Dumping Law that sets up a redress mechanism for anticompetitive practices. It has also formulated a regional consumer protection bill. The southern African regional body SADC has a Protocol on Trade, Article 25 of which obligates its members to implement measures to prohibit unfair business practices and promote competition. But unlike the European Union, none of these regional bodies has in place the means for enforcing community-wide standards, or indeed mounting an individual challenge to a country on an issue.

Regulators can impose a code of conduct or suggest that operators abide by it on a voluntary basis. Typically regulators have made operators provide a Code of Conduct as a condition of licence: as in the UK with the Toucan and 3G Codes of Practice.<sup>14</sup> The Botswana Telecommunications Authority (BTA) has sought to combine a regulatory "stick-and-carrot" approach. It is adding performance criteria on key areas like quality of service to the licences it has granted operators. It also advises but does not compel operators to abide by a Code of Conduct it issues. At first, operators were reluctant to discuss consumer issues but over time all have adopted a more co-operative approach.

However, where either licence conditions or a Code of Conduct exist, they are no guarantee that the consumer interest in relation to the key issues of prices or quality of services will be addressed. Few regulators have taken on the task of improving quality of service from mobile operators either

because they lack the will or the capacity to do so. Quality of service issues are often complex and the regulators may lack the resources to challenge a much better resourced mobile operator. The number of regulators imposing sanctions in the form of fines on issues relating directly to consumer issues is probably fairly small. Fines tend to be issued over non-compliance on issues like interconnection and whilst this arguably has a consumer impact, the sanction is rarely driven directly by a consumer-interest motive.

Finally whatever the virtues of the Code of Conduct approach, the regulator often stipulates that it is the last “port of call” after all other avenues for resolution have been exhausted. Not surprisingly, this limits the effectiveness of any Code of Conduct as it “raises the bar” in terms of the resources and capacity required by the individual complainant.

However, whatever assessment is made of the success or not of licence condition compliance and Codes of Conduct, operators there are still countries where consumers are not covered by any Code of Conduct, self-imposed or otherwise.

## **2.2 Level and type of complaints**

Voice service providers – whether fixed or mobile – are often reluctant to provide data on the level and type of complaints they receive. Operators view this complaints data as commercially sensitive information and are therefore reluctant to release it. But this argument is questionable: arguably most of the short-term issues identified would be dealt within a twelve-month period. Some regulators oblige operators to provide information of this kind and a number of them publish this information as a way of focusing on quality-of-service issues.

Levels of complaints are closely tied to expectations. . In less developed markets in Eastern Europe higher satisfaction levels were consistently registered as noted by a researcher for a major European mobile operator<sup>15</sup>. In other words, offered the same service, users in other European countries had higher expectation levels than those in the Eastern European part. In the absence of operator information, there are sometimes other surveys conducted that address issues such as levels of user satisfaction and these can be used as “proxies” in the absence of better information<sup>16</sup>.

All operators – particularly international operators - collect customer satisfaction data on a regular basis with large-scale samples in markets with very different sizes of customer bases and wealth levels. For example France Telecom conducts everything from quarterly surveys in Jordan (as it is a shareholder in Jordan Telecom) to a large number of consumer and trade surveys in France<sup>17</sup>. They have information upon which it is possible to assess levels of user satisfaction and quality-of-service perceptions. Occasionally, these surveys come into the public domain or are conducted independently. For example, in the United States, a survey of conducted on cellphone users in 2003 found that a quarter of them were dissatisfied with their provider but stayed with that operator despite being dissatisfied. Furthermore, a third of all those surveyed, rated their provider as “poor” or “very poor”<sup>18</sup>.

The Malaysian regulator, Malaysian Communications and Multimedia Commission, conducts (twice a year according to their website) a consumer satisfaction survey to “gauge consumers’ perceptions of the quality of communications and multimedia services”, you may want to say something about it see: <http://www.mcmc.gov.my/consumer/css.asp>.

Some regulators – like OFCOM in the UK, the Malaysian Communications and Multimedia Commission (MCMC) India’s Telecommunications Regulatory Authority of India (TRAI) – collect data on user satisfaction levels and use the data gathered to put pressure on operators to improve their services. The Malaysian regulator makes the point that satisfaction is a subjective rather

objective measure: “The Consumer Satisfaction Survey recognises the fact that adherence to technical standards alone is an insufficient measure of the quality of service. Intrinsic quality and perceived quality are two different things especially as consumers are becoming more demanding and informed about the choices available to them. Here the focus is on perceived quality - the customers' perception and experience. In some ways this measure is a subjective one”. However regulators in many developing countries either do not gather complaints data systematically or do not analyse the complaints made or concretely act upon the information gathered. The issue remains: if a regulator does not know what its consumers feel about the services they receive, how will they act on their behalf?

Turning the telescope around, it is interesting to see how consumers view regulators as defenders of consumers. In 2004, Consumers International carried out a survey of consumers in 16 African countries. Although the country samples were small, they were weighted to include a variety of different areas including peri-urban and rural. Their assessment of the telecoms regulatory agency or regulation of that area by Government was given a weighting from zero for not at all effective to 2 for very effective in the view of the consumers surveyed. The resulting index identifies five countries (Nigeria, Côte d'Ivoire, Mozambique, Ethiopia and Zimbabwe) at the more effective end of the scale and five at the other end. When asked what they thought of the basic services provided (including electricity, water and telephone) and the separate results for telephone identified five countries at the low end of the scale. In a majority of cases, those from rural areas were markedly less satisfied with basic telephone services provided. Consumers International concludes that:” In summary, the analysis indicates that existing regulation efforts are inadequate for bringing about improvements in the consumer quality of life”.<sup>19</sup>

One of the few African regulators to carry out a consumer survey was Botswana Telecommunications Authority. 40.8% of those surveyed were unaware of operators' complaints procedures and 45% were not sure how to claim financial compensation they were entitled to for service failure. Also 55% thought consumer representation was either fair or poor.<sup>20</sup>

### **Box 1: Benchmarking complaint levels – finding “metrics” for comparison**

Although there appear to be no universally accepted international benchmark figures for complaint levels, it is possible to identify some “metrics” that are helpful. In its 2003 annual report, the UK’s Ofcom reported that over 90% of all residential and business customers were happy with most services offered by providers. 96% said they were happy with broadband services. Another study from Ofcom noted that: “...results of tests suggest that more than 95% of call attempts are successful.”

In an Indian survey carried out by International Data Corporation Voice and Data Magazine<sup>21</sup> in 2003, operator BPL topped the GSM operators with 78.9%, Idea second with 78.9% and Hutch came third with 78.7%. Bharti and BSNL had 76.6% and 71.8% respectively. Indian regulator TRAI sets a 95% overall satisfaction rating as a benchmark .

By contrast, a survey of Gamcel mobile customers in the West African country of Gambia by its competitor Africell found that 76% of those surveyed had problems with Gamcel’s network and 85% had network problems at night, the busiest time for the network. This implies an overall satisfaction rating as low as 25%<sup>22</sup>. On a more optimistic note, a survey conducted by Synovate<sup>23</sup> in South Africa found that between 79.9%- 83.3% of all mobile customers were satisfied with the service offered by their provider. Using surveys to establish overall performance levels is one way of establishing benchmarks for operators.

Another way of establishing benchmarks, is to look at the percentage of complaints per thousand customers. In 2003, Ofcom published complaints data from mobile operators: the most successful company in terms of complaints was Virgin Mobile with 0.1% complaints per 1000 customers. So it is possible to establish a performance benchmark based on complaints per 1000 customers. The authors of a Government policy paper in Senegal established that call completion rates for local and trunk calls were in 2003 68% and 58% respectively. The authors expressed the view that the operators should be achieving 80% and 70% respectively by 2008.<sup>24</sup>

One of the key dangers of this approach is to simply keep adding measures that the operators have to meet: in Brazil the number of measures per operator that had to be submitted doubled to 100. However after consulting stakeholders, this number was halved to less than 50. Large numbers of measures are not always effective as they may not be easy to understand, access or make it possible to make comparisons between operators.

Main complaints relating to telecommunication services tend to be as follows: the price of services (particularly the high cost of local calls on fixed lines); network congestion; poor network coverage; failed calls (both not completed and cut-off); phone and handset-related; loss of pre-paid credit after loading, charges for SMS messages not delivered; calls directed to voice-mail when the network is congested; speed of maintenance and repairs; wrong billing (particularly with illegal use of lines); and the quality of fixed lines.

The main complaints to ISPs were: slow speeds; frequent disconnections; slow responses to complaints; the high cost of ADSL; the frequency of “down-time; and the slow response to repair and maintenance problems. From press coverage of similar issues in other parts of the developing world, it is clear that there are similar complaints from consumers<sup>25</sup>.

## **Box 2: Slamming and cramming**

According to the United States Federal Communications Commission the most common consumer complaints about local phone service are related to billing errors and questionable fees. Consumers file complaints with the FCC about credits, refunds, or adjustments allegedly owed to the subscriber and about specific line item charges. Two types of these complaints to the FCC are "slamming" and "cramming." Slamming is when your provider changes your plan or your service is switched to another company without your permission. Cramming is when your bill has unauthorized, misleading, or deceptive charges.

Source: FCC, United States.

### **2.3 Processes in place to resolve complaints**

All voice operators have some form of customer care function in place to deal with complaints although it varies in size depending on the number of customers the company has. The task of dealing with customers will be split between a telephone (and sometimes web-based access) based call centre and the retail agencies appointed by the operators who sell phones and airtime (sometimes owned by them, sometimes not), often referred to as "the channel". In most of the larger markets, the customer care function works around the clock.

Mobile operators sell a part of their services through retail channels that are not directly owned by them. Whilst their agreements with their resellers cover the treatment of consumers, it is simply not possible to oversee all of these resellers. In developed countries, these retailers will have a clear corporate existence but in developing countries there are the plentiful informal pre-paid card sellers who come and go, depending on their success at selling.

If these resellers were to treat their customers badly consistently then they would obviously lose business. But whether or not they respond well to most individual complaints is more of an open question. From interviews with industry figures, it is clear that the quality of resellers varies as in any industry.

The customer care functions of larger ISPs in developed countries bear an obvious similarity to those of fixed and mobile operators as they are often dealing with the same volumes of customers. However, the smaller ISPs found in developing countries have much more modest customer care functions and often engineers double up as customer care staff. In cyber-cafes, the only person able to deal with complaints is usually the Manager on duty, although that person may have access to a technical staff member or "double-up" in that role.

In some countries operators are compelled by their licence to have a consumer Code of Conduct but in many developing countries this simply does not exist. But even where Codes of Conduct supply a framework for complaints from customers, they are often not prominently displayed or used to educate customers. For example in Angola there is currently no framework in place with operators to receive and resolve customer complaints. The absence of such a framework makes it extremely hard for consumers to receive satisfaction and to do so within a reasonable period of time. Where there is no separate regulator, consumers can only complain directly to the operators themselves and with no obvious channel for redress if their complaint is rejected.

But regulators do not always publicise their complaints procedure. Eight of the thirty African countries surveyed in the IDRC report mentioned earlier had regulators with no public announcement about their complaints procedure on their web site.

Regulators themselves seem to adopt two significantly different positions in relation to consumer complaints. Either they encourage complainants to come directly to them and take up these complaints with operators. Or they see themselves as a point of “last resort” that the complainant can come to once he or she has exhausted all other avenues.

An example of the latter in Africa is Botswana where the BTA’s department of Compliance and Consumer Affairs is mandated to protect consumers of telecommunication service by investigates their complaints and resolving them where possible. But “consumers should exhaust all of the operators’ internal complaint procedures before seeking recourse from BTA’s Department of Compliance and Consumer Affairs”.<sup>26</sup> Consumers are advised to produce a detailed written record of these interactions with the provider. It promises to make “an independent assessment of the complaint” and that the complaint will be dealt with within two days of its receipt. But the latter actually represents “acknowledging receipt of the correspondence.” 90% of complaints handled by the BTA are resolved satisfactorily.

By contrast, Egypt’s NTRA has Contact Centre working 24 hours a day to receive complaints and queries. It also offers hearings when appropriate and a formal dispute resolution system. Obviously the resourcing for the complaints processes of regulators are heavily dependent upon the size of market they operate in and the amount of money they raise from Government and the sector to finance their work.

However relying on written evidence and complaints procedures publicized on the Internet may not be a “fit-for-purpose” response in developing countries. In many developing countries only a small minority of people have access to the Internet through which they can reach operator or regulator web sites. Furthermore, the (understandable) requirement for written complaints excludes those who lack literacy skills or do not have access to help from those that do.

### **3. The role of the regulator and consumer organisations**

#### **3.1 The role of the regulator**

Most (but by no means all) regulators have been set up with a consumer responsibility contained within their top-level objectives. The absence of references to the interests of the consumer does not mean that a regulator cannot act in their interest but it does help to have this role stated in the enabling framework of the regulator. The role of regulator can probably best be summarized by describing four different functions:

- Voice (allowing the user to be heard and being responsive through consultation and redress mechanisms);
- Choice (ensuring plentiful choice in terms of the nature, quality and amount of services);
- Representation (preventing dominance by large industry interests through consumer councils or committees);
- Information (allowing consumers to make well-informed choices).

A typical example of the *voice* function is the Nigerian regulator NCC’s creation of “a visible and credible Consumer Affairs Bureau that would serve as a ‘one-stop-shop’ which stakeholders can rely upon for information on the telecommunications industry in Nigeria”<sup>27</sup>. It sought not just to be a passive recipient of complaints “after the fact” but to “generate an unmatched awareness of consumer rights in Nigeria by establishing a strong bureau that would monitor and control telecommunications operators in Nigeria in order to protect consumers from unscrupulous practices

in the industry”. It has also established a Consumer Parliament that tours the different regions of the country where regulators and operators can be questioned directly by members of the public. Like Egypt’s NTRA (see below), the NCC has set up a call centre managed by Consumer help-desk Specialists, “who will courteously respond to inquiries, investigate and solve complaints in a professional and efficient manner”. If the help-desk specialists are not able to solve the complaint, the consumer may be requested to make a formal complaint in writing, which would then be assigned to an officer of the Consumer Affairs Department who would contact the service provider and resolve the problem. Overall the Bureau deals with 20-30 complaints a month.

A typical example of action taken to increase *choice* is the Hungarian regulator’s decision to cut interconnection charges in June 2006. The National Telecommunications Supervision (NHH) will require mobile telephone companies to cut the fees charged for calls from rival networks by almost half to boost competition and lower consumer prices. The Hungarian units of Deutsche Telekom AG's T-Mobile, Vodafone Group Plc and Telenor ASA's Pannon would have to cut their fees between 40 and 50% in several steps by January 2009. The regulator expects this to increase competitive choice for the consumer and lower prices for them<sup>28</sup>.

A good example of a *representation* mechanism is the Egyptian regulator NTRA’s “Telecom Consumers’ Rights Protection Committee” in 2004 and it is only one of a small number of examples in Africa and Arab States where representation from outside the regulator is involved. It has 13 individuals from different backgrounds and is chaired by the Executive President of the NTRA.

It meets regularly to discuss consumers’ concerns and set policies and strategic plans to fulfill their work including: consumer awareness campaigns (including a telecoms consumer’s guide), conducting market research work, checking quality of service offered and gathering and disseminating relevant information. Whatever assessment might be made of its effectiveness, its existence ensures that consumer interests are seen as important across the NTRA. And it is perhaps no coincidence that the NTRA produced the first study of roaming charges in the Arab States in defence of consumer interests.

In terms of the *information* role, the Indian regulator TRAI provides a good example as it has used operator data to create performance indicators. It takes data supplied by operators against a series of performance benchmarks and reports the results every quarter. The summary for the quarter ending December 2005 showed that:

- Provision of telephone within 7 days for exchange areas declared “On Demand” (Performance indicator: 100% in <7 days). 60 out of 71 licensees failed to meet this parameter.
- Faults per month per 100 telephones (Performance indicator: Should be less than 5 faults per 100 phones per month.) Mixed results but of private operators only three failed to meet it.
- Percentage of faults repaired by the next working day (Performance indicator: Should be 90%). One failed to meet this indicator anywhere.
- Mean time to repair (Performance indicator: Should be 8 hours) Only 8 out of 26 geographic areas met this benchmark. One operator in Mumbai took an average of 27 hours.
- Call completion rate in local network (Performance indicator: Should be >55%). Mixed results were reported.



- Metering and billing credibility (Performance indicator: Not more than 0.1% of bills should be disputed over a billing cycle). Only 1 out of 26 service areas of BSNL failed to meet this benchmark.

If regulators have information that will help consumer make choices between providers, they need to issue it widely and publicise its existence. The terms of Service Level Agreements agreed with operators need to be conveyed effectively to consumers if they are to make use of them.

### **Box 3: Defining basic consumer rights**

According to the Egyptian regulator NTRA, the following basic consumer rights criteria should be addressed:

- **Disclosure:** Providers must disclose to consumers, in advance of the purchase, the price and associated terms governing the provision of telecommunication services and equipment.
- **Choice:** Consumers have a right to select their services and vendors and to have those choices respected by industry.
- **Privacy:** Consumers have a right to personal privacy, to have protection from unauthorized use of their records and personal information, and to reject intrusive communications and technology; providers should be required to disclose these rights to consumers.
- **Public Participation and Enforcement:** Consumers have a right to participate in public regulatory proceedings, to be informed of their rights and of what agencies enforce those rights, and to have effective recourse if their rights are violated.
- **Accurate Bills and Redress:** Consumers have a right to accurate and understandable bills for products and services they authorize or purchase, and to fair, prompt and courteous redress for problems they encounter.
- **Right to Withhold Payment:** The customer must pay the undisputed amount of a bill, but must not be required to pay any reasonably disputed amounts pending the resolution of the dispute.
- **Non-Discrimination:** A licensed provider must provide telecommunication services to users at prices, terms and conditions that are non-discriminatory.
- **Safety:** Consumers have a right to personal safety and security and of their property in the use of services or equipment provided.

Source: NTRA website, <http://www.tra.gov.eg/english/Main.asp>

The creation of structures to deal with complaints on a 24/7 basis and analyzing data from all operators may sound very costly for regulators operating in smaller markets. However, much can be achieved at a more modest level.

Malaysia's regulator MCMC has set up a consumer forum called the Communications and Multimedia Consumer Forum of Malaysia (CFM)<sup>29</sup>. It was established in February 2001 to encourage the development of industry self-regulation. It primarily develops and oversees Codes that "serve the dual purpose of promoting high standards of service in the communications and multimedia industry while protecting the interest of the Malaysian consumer".

## 3.2 Consumer organisations and related bodies

Regulators act “on behalf” of the consumer and however closely they consult with them, they cannot alone represent the consumer. They are no substitute for consumers themselves having a voice. Likewise when the industry itself argues for greater competition, its interests coincide with those of consumers and its trade associations often speak up for consumers. But when individual companies or groups of companies resist increased competition or put forward their own narrower interest, there is a clear parting of the ways between the interests of some parts of the industry and the consumer.

The issue of who exactly these consumers are and who speaks for them is not necessarily a straightforward one. The noisiest (and sometimes most effective) consumers are nearly always the better off and the better educated. Often a very small group of technologically sophisticated users is as effective as a much wider group with less access to knowledge. At times, the burden of speaking for consumers may need to be carried by a small number of “self-interested” users of this kind.

Often, consumer activist groups will make no pretence of being representative and simply act as an irritant in a wider public debate. The Irish Commission for Communications Regulation has its own consumer website. However in response, a spoof website has been created that makes fun of the regulator’s efforts to help consumers. It could be argued that the spoof website is nothing more than an annoyance and does not do anything to help consumers. However conversely, it can be argued that its satirical approach to the key consumer authority encourages a questioning stance amongst those that view it. In short, opposition and contestation of the regulator’s actions will almost always be an essential part of its successful functioning in the interests of consumers<sup>30</sup>.

There are two types of consumer bodies of relevance to telecoms and Internet issues: those generic consumer organizations that deal with any type of complaint and those specifically focused on telecoms and Internet issues.

In terms of generic consumer bodies, the first consumer union was created in the United States in 1936 and the Organisation of Consumers Unions (now Consumers International), the first international federation of consumer organisations, started in the 1960s. The growth of consumer organizations across the world from that starting point has been quite uneven. The UK Consumers Association was launched in 1957 whereas the Cyprus Consumer Association was not launched until 1970. A typical example of a consumer association that is very active on ICT issues is the Portugese DECO that runs a web site that tackles issues like e-mail fraud.<sup>31</sup>

Africa experienced the fastest growth of consumer groups in the early 1990s. Consumer International’s membership grew from 21 groups in 1991 to 82 in October 1995. By 2000, 45 countries out of 53 in Africa had one or more consumer organisation with a total of 120 groups in existence. The later consumer organizations have been started, the less overall experience they are likely to have had in taking up consumer concerns.

Where generic consumer organisations exist, they are often small-scale and fragmented. For example an article in Egypt’s Al-Ahram Weekly Online<sup>32</sup> noted that no less than 66 consumer organisations were launched in the country during the 1990s. In Senegal, there are no less than five consumer organisations in that country. However an equally common pattern is that there is only one organisation per country with a small staff and few resources.

Many of the African consumer organisations do not get involved in consumer issues or case work in the telecoms and Internet sector. Those most likely to were those involved in working on basic services like water, electricity and telephony: ADETELS in Senegal is a good example of this type

of organisation. Several consumer organisations made an input into telecoms and Internet pricing issues, notably Mauritius' Association of Consumers of Mauritius and the Institute for Consumer Protection. Only four countries out of the 30 African countries surveyed had consumer organisations that were specifically focused on the telecoms and Internet sector: Côte d'Ivoire, Nigeria, Senegal, and South Africa.

Another significant group of organisations involved in consumer issues in the Internet field are the Internet Society (ISOC) chapters. ISOC describes itself as a professional membership organisation concerned with the development of the Internet. It has 73 chapters worldwide and a presence in all developing country regions. Its chapters vary enormously from the very active to the almost dormant. Often its members are the Internet activists who raise policy issues or campaign on issues of price and access.

### **3.3 Consumer participation and representation**

If regulators are to represent consumers then it is essential that their voices are heard, either directly in the overall board of the regulator or through Committees set up specifically by the regulator to have representatives of their interests. Sometimes both of these conditions are met by regulators but the voice of the consumer interest still often remains muted because those representing the consumer are not always effective: representation by ineffective individuals does not always guarantee that issues will be pursued strongly. However, it is possible to advertise for consumer representatives and to interview and choose appropriate individuals capable of carrying out the task. The independence of these consumer members is a key issue. As the Consumers International Report for 2004 noted: "Membership on regulatory boards is not inconsistent with independence if there is full access to information and no duty of confidentiality about the matters discussed. Guarantees of full disclosure of key matters (e.g. contract conditions for concessions and leases) are absolutely necessary for consumer organisations to exercise real representation"<sup>33</sup>.

However, representation should not be limited to regulatory bodies alone but should also encompass that other instrument for consumer choice, competition commissions. The report quoted above found that consumer organisations in Africa do not belong to and are rarely consulted by national competition commissions. Neither are consumers regularly informed of commission decisions. However, consumer organisations' participation in regulatory agencies is increasing. From the author's own survey only a handful of instances were identified where the telecoms regulator is working actively with consumer bodies in any way.

As noted above, few consumer organisations are involved with either the regulator or competition commissions. Therefore few have their voice directly heard in the governing body of a regulator and where it has occurred, their involvement has mainly been sought on the issue of resolving consumer complaints.

### **3.4 Innovative consumer services by regulator**

A number of developed country regulators have come up with innovative approaches to engaging consumers and providing much-needed information. The following are some examples of different approaches:

- The USA's Federal Trade Commission runs what it calls a Grand Slam Challenge web site. For as the web site's home page points out: "Whether you're investing in a business opportunity, buying or selling on an Internet auction, or looking for a scholarship, a home loan, or that dream vacation, it pays to learn how to shop smart. Because when your money's

at stake, you want to hit a grand slam — not a grand scam”. It supplies separate information for both individual consumers and businesses. For individual consumers it offer what it calls On Guard Online Quizzes on a series of key topics: ID theft, phishing, spyware, spam scams, P2P and online shopping. <http://www.consumer.gov/ncpw/>

- The UK regulator OFCOM has a well-developed consumer advice section on its web site. It summarises its attitude to providing information in the following way: ”Ofcom does not consider it has a primary role in improving information flows between suppliers and consumers – this is best left to the market. However, we recognise that in some cases the market may not deliver to consumers the information they want. Where the evidence suggests that this has resulted in consumer harm, or is likely to do so in the future, there may be a case for regulatory intervention”. In these cases, Ofcom will first consider the scope for a self-regulatory or co-regulatory initiative, or for an initiative that would involve the provision of information by a third party. Only in exceptional cases will Ofcom itself provide information about suppliers or their products and services. This approach mirrors Ofcom’s regulatory principles –“it is evidence-based and underpinned by a bias against intervention”. For example, it has an OFCOM Price Assurance Standard that it grants to price comparison web sites that meet its standards. <http://www.ofcom.org.uk/advice/>
- Hong Kong, China’s Office of the Telecommunications Authority (OFTA) provides a separate Consumer Focus section on its web site and under The Smart Consumer’s Corner it offers a combination of information on consumer programmes on television and radio and a selection of e-games including online quizzes. It also provides a full listing of operators customer charters all on a single page. It carries a listing of complaints and the outcome from them. For example, in April 2006 it concluded a complaint “concerning alleged misleading or deceptive sales conduct of Telecom Digital Mobile Ltd salesperson”. The finding was that the complaint was upheld and a fine was imposed. It also supplies a summary of the main details of the complaint. [http://www.ofta.gov.hk/en/consumer\\_interest/main.html](http://www.ofta.gov.hk/en/consumer_interest/main.html)
- If it is the well-informed and well-resourced who know how to complain, then the challenge is how to communicate information to those who lack literacy skills. The print media and web sites must form part of the communications portfolio of most organisations in this field but will be largely ineffective in communicating with the less well-educated. The more advanced regulators are using a combination of two different approaches: the “town hall” meeting and broadcast voice media. In Zambia, CAZ goes out every month to a different part of the country, explaining CAZ’s work and listening to the views of participants. Acknowledging that the circulation of the printed media is small, it is using radio and television to get its message across. It has bought one year’s worth of advertising to concentrate on consumer issues.

### **3.4 The role of the media**

The media often functions as the “Court of last resort” for consumers who feel they have not been able to obtain satisfaction through any other route. Sometimes this is an individual complaint that is taken up by in a newspaper article or on a TV programme. This type of media coverage undoubtedly makes providers more sensitive about the service they are offering but they can also claim that the case highlighted is an isolated incident. But more often the media cover those moments when operators have a service shortfall that is affecting lots of their readers or viewers.

Two examples from different parts of the world illustrate this category of media coverage. In December 2003, complaints against Canada's second largest telephone company Telus reached an all-time high, with customers reporting very long wait times when they phoned to complain about service. In the same period the regulator Canadian Radio-television and Telecommunications Commission received 4,000 complaints from frustrated Telus customers. Media coverage of this kind allowed the regulator to identify and respond to the problem, ordering the company in the words of one press report to "clean up its act". Among the requirements the company has to meet is answering customer calls within 20 seconds.

A similar situation faced users of British ISP Bulldog, owned by Cable and Wireless: they started complaining about service and customer support when the company found itself unable to deal with the level of new customers it was attracting. Customers had ordered higher capacity broadband lines and lower capacity lines than those ordered had been installed. A steady stream of complaints were aired on the tech web site ZDNet UK and ADSL Guide (a broadband service comparison site) and the story eventually was taken up by mainstream media.

The media can also be used by both regulators and operators to focus on consumer complaints. UK operator BT used the media to complain about complaints of mis-selling from companies it was competing against, a practice known as "slamming". BT used the media to urge the then regulator Oftel to respond to the rising complaints levels (11,000 in one particular month) to take action to address the problem. In a similar way, the UK premium rate services regulator ICSTIS<sup>34</sup> uses the media on an annual basis to focus on issues and complaints raised in the delivery of these services. However whether the media takes up these kinds of issues is a function of several different factors.

The effectiveness of the media depends on the political climate prevailing in a country and whether it allows the expression of differing opinions.

Whereas the telecoms and Internet sectors have begun to be liberalized in many countries, the process of media liberalisation has been much slower to take off. In many countries, there are now more diverse media, including FM radio stations, community radio stations and privately-owned TV stations. But there are still parts of the developing world where media is directly in Government hands (or owned by those close to Government) and as a result it is somewhat wary of taking up consumer complaints, particularly against another Government-owned entity like the incumbent operator. In turn, readers may be more reluctant to complain about service from a Government-owned entity in a Government-owned paper.

Finally voice service providers (particularly mobile operators) have been an extremely dynamic part of the economy and as a result they have nearly always been one of the largest spenders on media advertising, whether in broadcast or printed media. A significant number of journalists in the African study<sup>35</sup> indicated the implicit pressure this places on them in relation to raising consumer issues.

But it would be wrong to see this as a clear-cut issue as media may often take up individual customer complaints even if they do not champion consumer rights in other ways. In the context of developing countries, Kenya in particular has a number of lively consumer columns and quite a lot of press discussion of consumer issues even though telecoms operators are leading advertisers. Likewise in Madagascar, the press and TV take up consumer complaints from across the island. Often an issue is such a cause of public concern that they cannot afford to ignore it, whatever other pressures they labour under.

For example in Burkina Faso in 2002, two newspapers (Le Pays and Sidwaya) were among those who reported public outrage when the incumbent operator Onatel decided to unilaterally increase the cost of a call to Telmob subscribers without first submitting the increase proposal to the regulator. Likewise the press provided a lot of coverage when Onatel decided to carry out maintenance on the equipment providing the country's international Internet service without warning anyone and in so doing, bringing it practically to a halt. They were also among papers that covered an interconnection dispute between France Telecom and Onatel that disrupted service between the two countries. As Burkina Faso has a large diaspora community in France, the loss of the international voice service to the country for a time was a "bread-and-butter" issue.

In broad terms, media coverage of consumer issues can be broken down into three broad areas: significant political issues (like privatisation of the incumbent operator and ensuing job losses); industry sector coverage (the launch of new services, disputes between operators); and "bread-and-butter" issues affecting large numbers of people (pricing, access problems and coverage issues).

But where the media comes into its own is over large-scale events that affect many consumers. For example, newspapers are usually quick to cover moments when mobile operators' networks collapse under high customer use or are consistently congested.

### **3.5 Policy and legislative input**

As noted above, too few consumer organisations in the developing world are involved with either the regulator or competition commissions. Therefore, few have their voice directly heard in the governing body of a regulator and where it has occurred, their involvement has mainly been sought on the issue of resolving specific consumer complaints.

In other countries, there are a range of channels for inputting views and proposals into the policy and legislative process. The US NGO TeleCommunity Resource Centre both sits on the FCC Consumer Advisory Committee and has an online web space that allows people to forward comments and submissions. Australia's Consumers' Telecommunications Network has made representations to a wide range of bodies including: the Australian Communications & Media Authority, the Australian Competition & Consumer Commission, Standards Australia, Telecommunications Industry Ombudsman and the Telephone Information Services Standards Council. In a year it has both contributed to and tracked over 25 different regulatory and self regulatory reviews and inquiries.

For developing countries, there are two issues: whether regulatory bodies seek representations from them and whether they have the resources to carry out this kind of work. For example, in Africa only a minority of countries involve consumer organisations directly in the process of formulating policy and legislation in the sector. In Kenya, the involvement of KICTANET – which is not strictly speaking a consumer organisation – in the policy process is a relatively recent development: the whole policy process has taken twelve years and KICTANET has only become closely involved in the last two years.

In 2005, Botswana's BTA ran a consultation event on its future regulatory plans to which were invited several hundred people including MPs, local councillors, civil society representatives as well as industry figures. Again whatever the effectiveness of these types of consultation events in influencing policy or legislation, it certainly made a difference. It allowed the more usual concerns of the industry to be heard but also widened the discussion to include a range of different consumer concerns. Consumer associations in Senegal are regularly invited to policy consultations but it would be difficult to identify changes in policy or legislation that Government or regulator had made after receiving their input. The same is also true for South Africa where there is a great deal

of consultation but again there are few subsequent changes that can be attributed directly to consumer organisations.

#### **4. Best practices / recommendations**

It is important to have in place a framework of legislation and regulation that enshrines the consumer interest. Law and regulation relies upon: respect for the law, the ability of the judiciary to operate freely from the executive and for it to be transparent and open. There is always a distance between the idealised expression of how things should work and the reality of what actually happens. Nevertheless it would be helpful in some countries to see selective test cases – particularly in the case of competition law – to investigate the operational effectiveness of these frameworks. Regulators are set up to provide rules that might be accepted without recourse to law: indeed a number of regulators in their work with consumers make a virtue of their ability to use processes that avoid law. However in this role, they have control over a number of key “levers” that can influence whether consumer rights are adopted and operate.

These “levers” identified can best be summarized under the functional headings used in section 3.1:

##### **4.1 Voice (allowing the user to be heard and being responsive through consultation and redress mechanisms)**

The consumer function within the regulator needs to be well publicized, properly resourced and headed up by a senior management figure.

Codes of Conduct or Service Level Agreements (with clear outlines of the rights and responsibilities of consumers) that operators are obliged to respect as part of their licence conditions need to be in place. Regulators themselves need to have clearly publicized complaints procedures and decide whether they are a first or last port call for complainants. In countries with low levels of literacy, the complaints procedure needs to be publicized using television and radio. Because most complaint procedures rely on written evidence, developing country regulators (working in partnership with consumer organizations) need to create support mechanisms for consumers that do not possess these skills.

Regulators have the ability to react quickly to circumstances that are unfavourable to consumers and impose sanctions on operators that will rectify the problem.

Regulators need to be able to demonstrate that they will punish industry players who “break the rules” (and making the cost of the offense high enough to deter them from doing it again).

Regulators need to be able to create an environment and processes that will facilitate the successful resolution of complaints.

##### **4.2 Choice (ensuring plentiful choice in terms of the nature, quality and amount of services)**

Where it has not already occurred, regulators need to encourage competition (particularly in the services layer) to help address the issues of price and quality of service. Where there are only two or three competitors in a particular market sector, regulators need to examine whether there is any significant level of price and service differentiation that will allow consumers to make clear choices in the market place.

### **4.3 Representation (preventing dominance by large industry interests through consumer councils or committees)**

Regulators need to seek the opinions and ideas of consumers, both on everyday issues like price increases but also on the development of policy and regulation.

Regulators need to consider how they work with consumer bodies in a range of different ways. If permitted, they might offer support to them for handling certain kinds of work on their behalf. Particular emphasis might be given to supporting those complainants that lack the wealth and education to negotiate existing complaints processes.

But whether it is formal support or simply an informal working partnership it makes sense for the regulator to be in dialogue with effective consumer organisations.

Regulators also have a choice between having consumer representatives on their governing bodies (as too few currently do) or setting up some form of separate consumer committee. With the involvement of consumers – either as representatives or volunteers – it could be possible to create a more dynamic consumer input.

Where regulators are “vertically-defined” it may also be helpful (as Zambia’s CAZ has done) to enter into an alliance with water and electricity regulators on consumer issues. It may be through this form of joint working that issues of resourcing and scale might be resolved. Using approaches like this, regulators in smaller markets might be able to find the resources to offer a “direct” complaints service to consumers rather being one of “last resort”.

Where a competition body exists (a Competition Commission or Conseil de La Concurrence), regulators need to explore how best each body might contribute to addressing the consumer interest. Competition bodies will nearly always address larger scale, precedent-setting issues and the regulator may well be reluctant to let these kinds of issues out of its control. But it may well be useful to do so in order to demonstrate that competition law can and does function in the ICT sector.

### **4.4 Information (allowing consumers to make well-informed choices)**

Outside of information about their rights, consumers need to be able to compare issues like pricing and quality of service. Tactical one-off promotions and marketing offers obscure underlying differences in price. The regulator has the ability to both collect and publish information on pricing that allows consumers to see which providers are cheaper, particularly for voice services.

Alongside price, it is also possible to collect quality of service information from operators and publish it on a regular basis (see TRAI example in section 3.1). The same would also be true for complaints data from operators, covering who is complaining about what. Again if published on an annual basis, the information be of little direct tactical use to competitors and would encourage a more transparent market.

As with the example from India given in 3.1, regulators need to set a simple “basket” of performance indicators on which operators can be judged and the results from these studies should be published at least on an annual basis. On a slightly broader front, regulators need to be proactive in educating consumers about market issues like underlying mobile prices and consumer broadband and contention ratios.



The regulator has a choice between asking (or compelling) operators to provide the information and collecting it independently. Circumstances vary and it may be more effective to have an independently conducted survey that addresses these issues. The cost of getting the information needs to be cost-effective. Operators already collect much of the data but some protest that it would be costly to provide it and it is important to ensure compatibility of data gathered. However it is observed that operators in many parts of the world have been able to do so. Information of this kind will act as a powerful tool to promote consumer empowerment and freedom of choice.

Regulators need to collect and analyse complaints made to them and publicise the resulting analysis. Where appropriate, significant categories of complaints should be used to influence policy or regulatory decisions.

Regulators should use the media to publicise key information about pricing and quality issues as coverage of this kind will influence consumer behaviour and act as a spur for poorly performing operators to improve their service. Media strategies in countries with low levels of literacy need to include a mixture of television, radio and face-to-face meetings.

### ***Preparing for Tomorrow***

The introduction of VoIP and NGN networks is likely to create different variants of a number of consumer issues: some are already in existence, whilst others are a result of both market and technology transitions:

- *More sophisticated and sometimes more pervasive fraud*

There are a number of variants of existing versions of fraud that are being carried out on IP networks. They take existing scams and simply try to make them more convincing:

**SPIT:** The phone version of spam in which someone leaves voice messages on your phone. These are automated, pre-recorded messages selling things like cheap cruises. In some cases, the offers are fraudulent: people are being asked to buy goods or services that do not exist.

**VISHING:** A variant of e-mail fraud in which a person ringing from what appears to be a perfectly genuine number asks you for your bank details. When you ring back to check, it's answered in a way that leads you to believe it's genuine. In reality, the fraudster has simply set up a genuine number with the organisation's IP-enabled PABX that is then rerouted back to the fraudster.

At the heart of these problems in technical terms is the fact that VoIP has been set up using a protocol that is designed for open interaction whereas previous phone networks were not set up in this way. There are security solutions but there have been cases where VoIP-enabled systems have been hacked into. This has raised issues for example about whether providers tell customers that their credit card details have been obtained by others.

Also like spammers, potential fraudsters are relatively hard to trace and may live in countries where it would be hard to bring successful prosecutions.

- *Quality of service issues become more complex as network interconnections increase*

In a circumstance where there are a limited number of operators in a market, it is challenging but not impossible to check both the retail and wholesale Quality of Service (QoS). Checking the quality of wholesale interconnections becomes particularly important where there are several operators, as liability for loss of QoS may not lie directly with the company providing him or her with service.

For example, if terminations on another mobile network are particularly bad, then the consumer may or may not understand that this is probably not the fault of their provider but of the company it is interconnecting with. More sophisticated consumers might see where the fault lies but there is no guarantee that this would be the case.

In a market where there is more than one infrastructure provider and for example many VoIP service providers without their own networks, a call from one person to another may travel across at least four different networks and sometimes more. Identifying where there is loss of QoS will need an effective approach to monitoring wholesale interconnect quality.

The problem will again be present when mobiles are able to use a variety of wireless networks to send their signal. For example, a mobile might start out sending its signal via a Wi-Fi hotspot before entering one or more networks provided by mobile operators. If there is a problem either sending the call or of its quality, the consumer's immediate reaction might be to blame his or her mobile provider. Whereas it is possible that the fault may lie with the Wi-Fi hotspot provider. The regulator will need to untangle where the problem is occurring in order to improve QoS.

- *New circumstances create new QoS issues*

As operators are increasingly seeing their networks (particularly IP networks) as a means to sell a widening range of "value-added" services, QoS issues will become apparent across this portfolio of services. Issues around failure to deliver SMS messages and subsequent charges for notification are a simple precursor of this more complex world.

Increasingly, mobile operators are selling data services using 3G-enabled networks. For a variety of reasons, download speeds vary enormously. For example, a particular part of the operator's network may be insufficiently provisioned to handle the volume of data users on a given day.

The net result will be that a download takes longer and the consumer is charged more. Therefore the same download may cost two entirely different prices to the consumer for reasons that he or she has no control over. Imagine being charged more for a three minute phone call because lines were heavily congested to get some idea of the potential problem. It is therefore important for regulators to check QoS issues for a basket of services, particularly when they are widely used.

A similar QoS issue occurs with IP-TV. For example, what kind of delay is acceptable on channel changing as this is not instantaneous as with terrestrial TV? Should the delay be same as for satellite television? Consumers also often do not realise that these response times will be slowed down when a phone call is being made on the same line.

In a world of increasing complexity, it is important that the consumer is as well informed as possible on these issues. Thus when they complain about fraud or QoS issues they are more likely to understand what is occurring and be helpful to providers and regulators who may be able to help them with issue involved.

Therefore the task for the regulator is one of creating a consumer education programme that warns consumers of potential frauds. In a developed country with higher levels of literacy this might involve media campaigns and particular activity on its web site. In developing countries this activity might take the form of working with broadcasters to raise levels of awareness about how to avoid this kind of fraud. In both instances, the regulator needs to work closely with existing consumer organisations to ensure that they are also aware of potential problems and spread the same warnings in their media work.

Since the task of consumer education is a large one wherever it is undertaken, it is important to see the role of the regulator as one in which it does not seek to carry the burden of the whole task itself but through partnerships it shares the task with others, particularly consumer organisations.

## Resources

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The Tanzania Communications (Consumer Protection) Regulations, Government Notice No 271, 9 September 2005, Tanzania

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- <sup>1</sup> Consumers International (CI) supports, links and represents consumer groups and agencies all over the world. It has a membership of over 230 organisations in 113 countries. It strives to promote a fairer society through defending the rights of all consumers, especially the poor, marginalised and disadvantaged.
- <sup>2</sup> Information given in confidence to the author by a researcher for a major global mobile operator.
- <sup>3</sup> This rather elegant summary of functions comes from Modernising Regulatory Accountability: critiques, doctrines and instruments, Martin Lodge, LSE:  
[www.policyinstitute.tcd.ie/working\\_papers/Martin%20Lodge\\_Policy%20Institute\\_21%20Jan03.ppt](http://www.policyinstitute.tcd.ie/working_papers/Martin%20Lodge_Policy%20Institute_21%20Jan03.ppt)
- <sup>4</sup> An IDRC-funded study: <http://www.afridigital.net/downloads/IDRCconsumerdftV2.doc>
- <sup>5</sup> [http://en.wikipedia.org/wiki/Consumer\\_care](http://en.wikipedia.org/wiki/Consumer_care)
- <sup>6</sup> [http://www.un.org/esa/sustdev/publications/consumption\\_en.pdf](http://www.un.org/esa/sustdev/publications/consumption_en.pdf)
- <sup>7</sup> Assessing consumer activity in the telecoms and Internet sector in Africa, Balancing Act for IDRC, May 2006 (see [www.afridigital.net](http://www.afridigital.net) for a downloadable version of the report.
- <sup>8</sup> Canada's Office of Consumer Affairs: The Consumer Trends Report  
<http://strategis.ic.gc.ca/epic/internet/inoca-bc.nsf/en/ca02091e.html#a1>
- <sup>9</sup> Two UK examples of codes of practice: Toucan Code of Practice <http://www.toucan.com/site/code.aspx>  
3G Code of Practice <http://www.three.co.uk/advice/detail.omp?cid=1109270025945>
- <sup>10</sup> ITU World Telecommunication Regulatory Database.
- <sup>11</sup> Introducing Competition Policy into Developing Economies: A Summary of Lessons Learned, David Smith and Su Sun, Perspectives, Vol. 2, No. 4
- <sup>12</sup> Ibid
- <sup>13</sup> Listing of laws relating to competition policy in North and Latin Americas:  
[http://www.ftaa-alca.org/ngroups/NGCP/Publications/DomLaws\\_e.asp](http://www.ftaa-alca.org/ngroups/NGCP/Publications/DomLaws_e.asp)
- <sup>14</sup> Two UK examples of codes of practice: Toucan Code of Practice:  
<http://www.toucan.com/site/code.aspx>  
3G Code of Practice that mentions Otelo:  
<http://www.three.co.uk/advice/detail.omp?cid=1109270025945>
- <sup>15</sup> Information given in confidence to the author by a researcher for a major global mobile operator.
- <sup>16</sup> A typical example: Synovate (2005) 'SAS Index Media Information', Synovate, Johannesburg, 25 November 2005, available online at [http://www.sas-index.co.za/Microsoft%20Word%20-%20SASIndex\\_Media%20Information\\_Nov2005.pdf](http://www.sas-index.co.za/Microsoft%20Word%20-%20SASIndex_Media%20Information_Nov2005.pdf)
- <sup>17</sup> [www.francetelecom.com/](http://www.francetelecom.com/)
- <sup>18</sup> Survey shows many wireless phone customers dissatisfied with their service: <http://researchnews.osu.edu/archive/celsatis.htm>
- <sup>19</sup> Consumer Protection and Quality of Life in Africa Through Competition and Regulation 2004 Annual Report, Consumers International  
<http://www.bta.org.bw>
- <sup>20</sup> <http://www.bta.org.bw>
- <sup>21</sup> Indian Mobile Operators flunk Customer Satisfaction Test: <http://www.mobile-fun.org/forum/showthread.php?p=17>
- <sup>22</sup> Results shown to author on a trip to Gambia in January 2006.
- <sup>23</sup> Ibid
- <sup>24</sup> See Senegal country case study: <http://www.afridigital.net/downloads/IDRCconsumerdftV2.doc>
- <sup>25</sup> Research findings from: <http://www.afridigital.net/downloads/IDRCconsumerdftV2.doc>
- <sup>26</sup> <http://www.bta.org.bw>
- <sup>27</sup> [www.ncc.gov.ng/](http://www.ncc.gov.ng/)
- <sup>28</sup> Bloomberg report carried on 30 June 2006: <http://www.bbj.hu/>
- <sup>29</sup> <http://www.cfm.org.my/>
- <sup>30</sup> Commission for Communications Regulation, Ireland has its own special consumer website:  
[http://www.askcomreg.ie/about\\_us/default.asp?NCID=51](http://www.askcomreg.ie/about_us/default.asp?NCID=51)  
Spoof version of the above site: [http://www.comwreck.com/blog\\_49\\_feb.html](http://www.comwreck.com/blog_49_feb.html)
- <sup>31</sup> <http://www.deco.proteste.pt/>
- <sup>32</sup> <http://weekly.ahram.org.eg/2003/663/fe1.htm>
- <sup>33</sup> Ibid
- <sup>34</sup> Independent Committee for the Supervision of Standards of Telephone Information Services
- <sup>35</sup> IDRC, Ibid